

AMENDED IN ASSEMBLY APRIL 16, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2675

**Introduced by Committee on Labor and Employment (Assembly
Members Swanson (Chair), Alejo, Allen, Furutani, and Yamada)**

March 5, 2012

An act to amend ~~Sections~~ *Section 1727 and 1742* of the Labor Code,
relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2675, as amended, Committee on Labor and Employment. Public
works: prevailing wage rates: penalty assessment.

Existing law regulating public works contracts requires the awarding
body of a public works contract to withhold and retain all amounts
required to satisfy any civil wage and penalty assessment issued by the
Labor Commissioner before making payments to the contractor of
money due under the contract.

This bill would specify that ~~those amounts are forfeited~~ *amounts upon
receipt of a final order that is no longer subject to judicial review, the
retained amounts necessary to satisfy the final order shall be deemed
forfeited by the contractor or subcontractor.*

~~Existing law permits an affected contractor or subcontractor to obtain
review of a civil wage and penalty assessment by transmitting a written
request for a hearing to the office of the Labor Commissioner that
appears on the assessment within 60 days after service of the assessment.
Existing law permits an affected contractor or subcontractor to obtain
review of the decision of the director, and then an administrative law
judge by filing a petition for a writ of mandate to the superior court
within 45 days after service of the decision.~~

~~This bill would provide, notwithstanding the provisions detailing the manner of service required for a civil wage and penalty assessment, that specified extensions of time do not apply to a request for review of an assessment or a petition for a writ of mandate.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1727 of the Labor Code is amended to
2 read:

3 1727. (a) Before making payments to the contractor of money
4 due under a contract for public work, the awarding body shall
5 withhold and retain therefrom all ~~forfeited~~ amounts required to
6 satisfy any civil wage and penalty assessment issued by the Labor
7 Commissioner under this chapter. The ~~forfeited~~ amounts required
8 to satisfy a civil wage and penalty assessment shall not be disbursed
9 by the awarding body until receipt of a final order that is no longer
10 subject to judicial review.

11 (b) If the awarding body has not retained sufficient money under
12 the contract to satisfy a civil wage and penalty assessment based
13 on a subcontractor's violations, the contractor shall, upon the
14 request of the Labor Commissioner, withhold sufficient money
15 due the subcontractor under the contract to satisfy the assessment
16 and transfer the money to the awarding body. These amounts shall
17 not be disbursed by the awarding body until receipt of a final order
18 that is no longer subject to judicial review.

19 (c) *Upon receipt of a final order that is no longer subject to*
20 *judicial review, the retained amounts necessary to satisfy the final*
21 *order shall be deemed forfeited by the contractor or subcontractor.*

22 ~~SEC. 2. Section 1742 of the Labor Code is amended to read:~~

23 ~~1742. (a) An affected contractor or subcontractor may obtain~~
24 ~~review of a civil wage and penalty assessment under this chapter~~
25 ~~by transmitting a written request to the office of the Labor~~
26 ~~Commissioner that appears on the assessment within 60 days after~~
27 ~~service of the assessment. Notwithstanding the manner of service~~
28 ~~performed pursuant to subdivision (a) of Section 1741, the~~
29 ~~extension of time provided in Section 1013 of the Code of Civil~~
30 ~~Procedure shall not apply to a request for review of the assessment.~~

1 ~~If no hearing is requested within 60 days after service of the~~
2 ~~assessment, the assessment shall become final.~~

3 ~~(b) Upon receipt of a timely request, a hearing shall be~~
4 ~~commenced within 90 days before the director, who shall appoint~~
5 ~~an impartial hearing officer possessing the qualifications of an~~
6 ~~administrative law judge pursuant to subdivision (b) of Section~~
7 ~~11502 of the Government Code. The appointed hearing officer~~
8 ~~shall be an employee of the department, but shall not be an~~
9 ~~employee of the Division of Labor Standards Enforcement. The~~
10 ~~contractor or subcontractor shall be provided an opportunity to~~
11 ~~review evidence to be utilized by the Labor Commissioner at the~~
12 ~~hearing within 20 days of the receipt of the written request for a~~
13 ~~hearing. Any evidence obtained by the Labor Commissioner~~
14 ~~subsequent to the 20-day cutoff shall be promptly disclosed to the~~
15 ~~contractor or subcontractor.~~

16 ~~The contractor or subcontractor shall have the burden of proving~~
17 ~~that the basis for the civil wage and penalty assessment is incorrect.~~
18 ~~The assessment shall be sufficiently detailed to provide fair notice~~
19 ~~to the contractor or subcontractor of the issues at the hearing.~~

20 ~~Within 45 days of the conclusion of the hearing, the director~~
21 ~~shall issue a written decision affirming, modifying, or dismissing~~
22 ~~the assessment. The decision of the director shall consist of a notice~~
23 ~~of findings, findings, and an order. This decision shall be served~~
24 ~~on all parties and the awarding body pursuant to Section 1013 of~~
25 ~~the Code of Civil Procedure by first-class mail at the last known~~
26 ~~address of the party on file with the Labor Commissioner. Within~~
27 ~~15 days of the issuance of the decision, the director may reconsider~~
28 ~~or modify the decision to correct an error, except that a clerical~~
29 ~~error may be corrected at any time.~~

30 ~~The director shall adopt regulations setting forth procedures for~~
31 ~~hearings under this subdivision.~~

32 ~~(c) An affected contractor or subcontractor may obtain review~~
33 ~~of the decision of the director by filing a petition for a writ of~~
34 ~~mandate to the appropriate superior court pursuant to Section~~
35 ~~1094.5 of the Code of Civil Procedure within 45 days after service~~
36 ~~of the decision. Notwithstanding the manner of service performed~~
37 ~~pursuant to subdivision (b), the extension of time provided in~~
38 ~~Section 1013 of the Code of Civil Procedure shall not apply for~~
39 ~~filing a petition for writ of mandate. If no petition for writ of~~
40 ~~mandate is filed within 45 days after service of the decision, the~~

1 order shall become final. If it is claimed in a petition for writ of
2 mandate that the findings are not supported by the evidence, abuse
3 of discretion is established if the court determines that the findings
4 are not supported by substantial evidence in the light of the whole
5 record.

6 (d) ~~A certified copy of a final order may be filed by the Labor~~
7 ~~Commissioner in the office of the clerk of the superior court in~~
8 ~~any county in which the affected contractor or subcontractor has~~
9 ~~property or has or had a place of business. The clerk, immediately~~
10 ~~upon the filing, shall enter judgment for the state against the person~~
11 ~~assessed in the amount shown on the certified order.~~

12 (e) ~~A judgment entered pursuant to this section shall bear the~~
13 ~~same rate of interest and shall have the same effect as other~~
14 ~~judgments and shall be given the same preference allowed by law~~
15 ~~on other judgments rendered for claims for taxes. The clerk shall~~
16 ~~not charge for the service performed by him or her pursuant to this~~
17 ~~section.~~

18 (f) ~~An awarding body that has withheld funds in response to a~~
19 ~~civil wage and penalty assessment under this chapter shall, upon~~
20 ~~receipt of a certified copy of a final order that is no longer subject~~
21 ~~to judicial review, promptly transmit the withheld funds, up to the~~
22 ~~amount of the certified order, to the Labor Commissioner.~~

23 (g) ~~This section shall provide the exclusive method for review~~
24 ~~of a civil wage and penalty assessment by the Labor Commissioner~~
25 ~~under this chapter or the decision of an awarding body to withhold~~
26 ~~contract payments pursuant to Section 1771.5.~~